



Marine Corps Legal Services Military Justice Report 2010



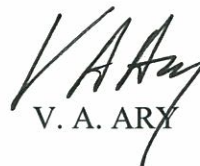
Staff Judge Advocate to the Commandant

17 December 2010

The Marine legal community entered Fiscal Year 2010 focused on improving the quality of our military justice practice, mindful that good order and discipline directly contributes to the combat effectiveness of our Nation's expeditionary force-in-readiness. In July, we published a Strategic Action Plan that prioritized the fundamentals: setting, training to, and enforcing standards for the delivery of legal services. By stressing these fundamentals, we took the first steps toward reinforcing accountability for the military justice mission at all levels, and most importantly, advancing the goal of ensuring justice is achieved in every case.

The Department of the Navy legal organizations will remember FY 10 primarily for the two external reviews directed by Congress. These comprehensive reviews raised issues relating to a number of longstanding challenges facing our two legal communities, especially in the practice of military justice, the statutory mission most shared at the Department level. This annual report focuses exclusively on the state of military justice in the Marine Corps. However, we recognize that the delivery of military justice within the Department and across two different Services requires a balance in Departmental leadership and organization, service-level supervision and accountability, constant vigilance, and a dedication to teamwork.

I am extremely proud of the accomplishments of the Marine legal community in elevating our military justice practice. The Marine Corps continues to have the preponderance of the effort, litigating over three quarters of the general and special courts-martial in the Department of the Navy during FY 10. To effectively meet these demands, we have chosen to emphasize efficiency, with a focus on institutional processes and supervision that will produce enduring results. To guarantee accountability for each case, we implemented the Case Management System in February and established real-time, total visibility over the Marine Corps' military justice case load. In May, the Marine Corps instituted a new, formal inspection regime that allows Commanding Generals to use subject matter experts to conduct inspections of their law centers to ensure their legal services meet our high standards. On the manpower front, the Marine Corps increased the number of judge advocates and took steps to improve the quality and retention of our military justice practitioners. Our trial and defense communities each created innovative SharePoint websites that expand the legal resources available for all judge advocates in the community. These actions are a few of the FY 10 initiatives that will form the foundation of future efforts to position the Marine legal community to contribute to the success of the Navy-Marine Corps legal team in the years to come.


V. A. ARY

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I. INTRODUCTION. Military justice remains the primary statutory mission for uniformed judge advocates and is the foundation upon which the Marine legal community is built. This annual report to the Secretary and to the Commandant of the Marine Corps describes the state of military justice in the Marine Corps at the outset of the year, highlights initiatives taken to improve the delivery of military justice services, offers an assessment of the accomplishment of the military justice mission in Fiscal Year 2010 (FY 10), and analyzes trends as we look ahead to balance available resources to meet future military justice requirements.

FY 10 was a pivotal year for the Marine Corps legal services community and for our military justice practice. Congress ordered two external reviews of the Departmental legal mission and these pending reviews, along with the Marine Corps Legal Services Strategic Action Plan 2010-2015, addressed longstanding challenges related to performance of, and accountability for, the service-level military justice mission. After evaluating these challenges, the Marine legal community acted with a series of initiatives designed to elevate the practice of law in the Marine Corps, and particularly to improve our military justice practices and procedures. The implementation of these initiatives produced immediate results and promises to produce sustained improvement to our military justice practice in the years to come.

II. BACKGROUND. An analysis of the Departmental trends over the last several years reveals a declining number of courts-martial and indicates that the Marine Corps continues to try an increasing percentage of the courts-martial within the Department of the Navy. In FY 10, the Marine Corps litigated 77% of the courts-martial in the Department. Figures A and B illustrate the caseload distribution between the services, highlighting how critical the Marine Corps' service-level mission is to the successful accomplishment of the Department of the Navy's military justice mission.¹

¹ Official court-martial statistics are filed yearly in an Annual Report from the Code Committee on Military Justice. Once released, reports are available at <http://www.armfor.uscourts.gov/Annual.htm>. 10 U.S.C. 946 requires every service to make an annual comprehensive report that includes information on the number and status of military justice cases.



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Figure A. General and Special Court-Martial Statistics for FY 10

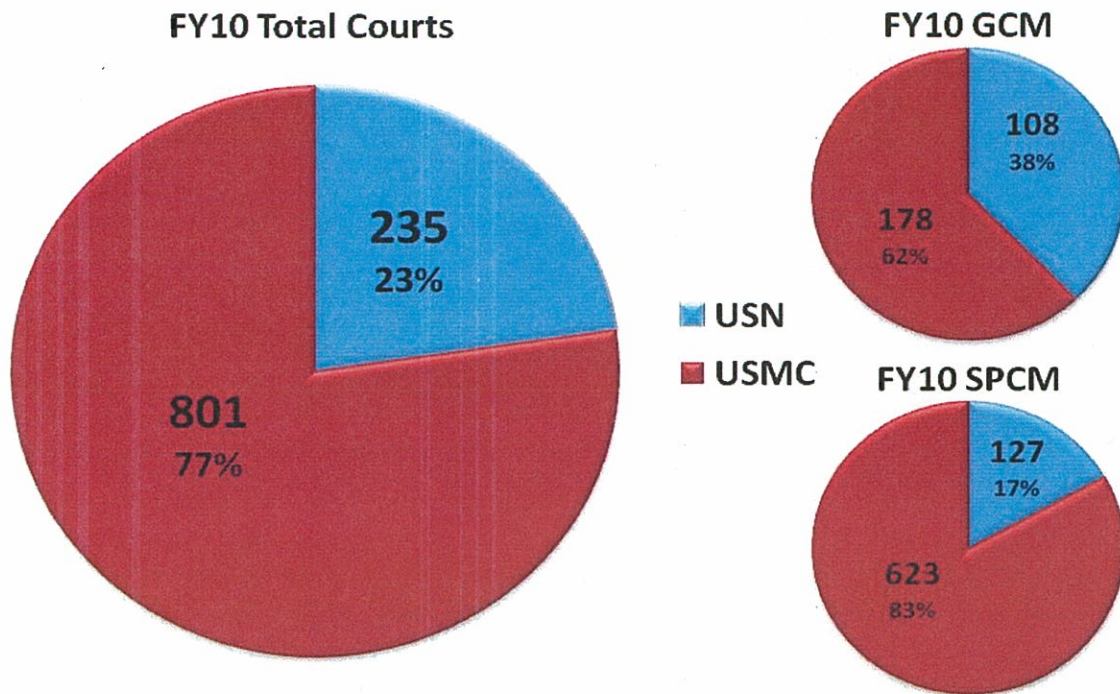
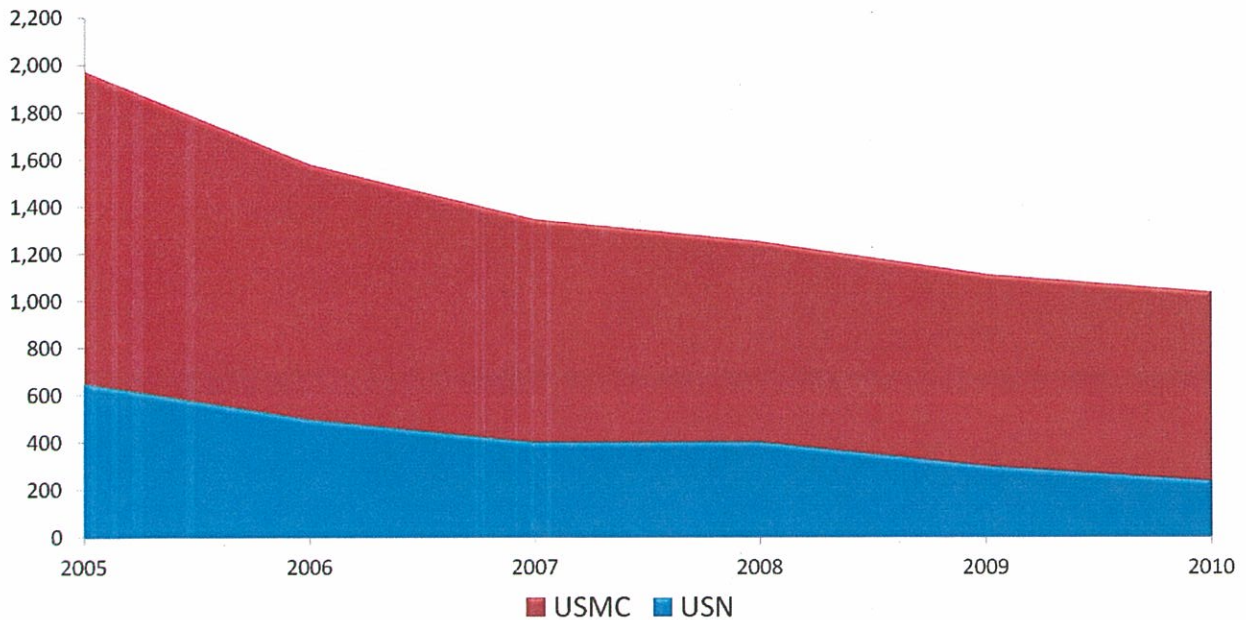


Figure B. USN and USMC GCM/SPCM totals FY 05 - FY 10



	2005	2006	2007	2008	2009	2010
USMC	1,324	1,084	949	855	815	801
USN	645	493	397	398	297	235
Totals	1,969	1,577	1,346	1,253	1,112	1,036



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As the year began, the demand for Marine judge advocate support to our deployed forces continued, as it has since 2003, to compete with traditional garrison military justice requirements. The resulting lack of continuity in military justice billets threatened to erode one of our core competencies. Congressional scrutiny of the Department of the Navy as a whole focused on particular cases and cited historical challenges in post-trial and appellate processing. Although overall court-martial numbers and, particularly, special court-martial numbers declined, there appeared to be no corresponding reduction in the demand for military justice resources and expertise. Additionally, long-standing gaps in service-level authority to supervise the administration of the military justice mission remained, contributing to a lack of uniform and enforceable standards for the Marine legal community and inconsistent execution of the mission.

Against this backdrop, the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) conducted the first comprehensive internal review of the delivery of legal services in the Marine Corps since 1990. Having determined that our legal organization was structurally sound and that the Marine Corps was acting to address manpower deficiencies, the Marine legal community took action in the form of initiatives aimed at elevating the practice of law. Initial indications from FY 10 suggest that these initiatives will ensure lasting, consistent success in accomplishing the military justice mission, notwithstanding variations in the court-martial case load or available resources.

III. INITIATIVES. The Marine Corps Legal Services Strategic Action Plan 2010-2015 sets forth five strategic goals establishing the blueprint for improving the delivery of legal services in the Marine Corps:

- 1) Standardize functional areas, procedures, and technology to foster a common operating scheme throughout the community of practice;
- 2) Develop and maintain critical capabilities necessary to execute core competencies and improve the professional training, education, and performance of the legal services community;
- 3) Create and implement a formalized and Commander-based inspection program to facilitate transparent oversight of the readiness of all Marine legal offices;



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- 4) Evaluate and, as appropriate, adapt organizational structure to right-size the legal community and achieve maximum efficiency with limited resources; and
- 5) Capture, memorialize, and promulgate legal services doctrine to exploit lessons learned and improve the delivery of legal services.²

To achieve these strategic goals, the Marine legal community focused its efforts on certain key initiatives, many of which targeted our military justice practice.

A. Goal: Standardize Functional Areas, Procedures, and Technology.

1. Case Management System (CMS). Of the many initiatives implemented in FY 10, CMS has had the most important and immediate impact. In the summer of 2009, recognizing the need for a comprehensive, integrated courts-martial tracking system, the SJA to CMC began identifying the requirements for an effective case tracking and management system.³ With the ultimate goal of protecting the legal rights of every accused through accurate and reliable case tracking, SJA to CMC sought a case management system that would:

- 1) provide a cradle-to-grave common operating picture for military justice practitioners and supervisors to manage and oversee caseloads at all levels of the Marine Corps;
- 2) provide easy, non-redundant data entry, retrieval, and report generation capability for military justice clerks;
- 3) generate multiple views and reports;
- 4) use affordable, off-the-shelf technology, supportable by Marine Corps IT systems;
- 5) allow expeditious implementation throughout the Marine Corps;
- 6) provide total visibility of inbound cases from the Marine Corps to the Navy and Marine Corps Appellate Review Activity (NAMARA);
- 7) accommodate expanding requirements; and
- 8) provide up-to-date, real-time data for Commanders and legal leadership to identify trends.

² There is currently a working group revising the doctrine for Legal Services Support in the Marine Corps.

³ To minimize the demands on the case management system, SJA to CMC chose to use SharePoint for the Marine legal community's knowledge management platform, simplifying the evaluation criteria for potential case management systems.



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Several systems were evaluated, including the Federal Case Management/Electronic Case Filing system (CM/ECF), and the Navy JAG Corps' Case Management, Tracking and Information System (CMTIS). CMS, a Lotus Notes based, web-enabled software application, was selected.⁴ CMS tracks court-martial cases from a command's request for legal services through trial and until the case is received at NAMARA (i.e. throughout the service-level lifespan of a court-martial). After successfully testing CMS at various Marine legal offices, the SJA to CMC mandated its use in MARADMIN 062/10 of 1 February 2010. The implementation of a common, integrated, real-time case tracking database produced immediate results by providing complete visibility over every case at every stage of the service-level process and eliminating gaps caused by a variety of incompatible systems throughout the Marine Corps. CMS is currently being expanded to provide a standardized database for administrative separations and investigations.

Notably, CMS went from development to Marine Corps-wide implementation in six months (August 2009 – February 2010) at a total cost of \$48,480.00 (database development and training). Since February 2010, the Marine Corps has spent approximately \$10,000.00 on CMS training (\$5,250.00 on technical support training for personnel of the Judge Advocate Division, Headquarters Marine Corps (JAD) and approximately \$5,000.00 on fleet-wide user training conducted by JAD personnel), and has also upgraded and revised CMS to improve its utility. The majority of these upgrades were based on user feedback. While CMS is not currently used to track USN cases (not tried by the Marine Corps) and is not used to track USMC cases after they are received by NAMARA, CMS could be expanded to do so quickly and affordably. CMS could also be modified to track additional metrics as necessary.

2. Standardized Forms. In FY 10, JAD began the process of capturing and consolidating forms, document templates, checklists, and standard operating procedures (SOP) with a view toward standardization where appropriate. This initiative included a pilot program on two important military justice post-trial documents: the Staff Judge Advocate's Recommendation (SJAR) and the Convening Authority's Action (CAA). These documents have been tested and, pending comments from the field, are scheduled to be implemented throughout the Marine Corps

⁴ Lotus Notes is the same software application the Army uses to track its military justice and administrative law matters.



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as a step toward promoting uniformity where it will expedite post-trial processing. JAD's adoption of SharePoint as our primary knowledge management portal facilitates our efforts to capture best-practices by providing a "Community of Practice" forum accessible by judge advocates across the enterprise as a means of generating ideas and collaborating on their evaluation and development.

3. Digital Records of Trial. In FY 10, in an effort to modernize our practice, the Marine Corps began to use digital records of trial with certain cases subject to appellate review. Instead of shipping the original record and two paper copies that are required for cases pending mandatory review before the Navy-Marine Corps Court of Criminal Appeals (NMCCA), the Legal Service Support Section, (LSSS) 1st Marine Logistics Group, Camp Pendleton, California, with the authorization of NMCCA and the cooperation of the appellate divisions, has been scanning the original record onto compact disks (CD) in a PDF format and sending the original paper record with the appropriate number of CDs. Because the record is now a PDF file, it is formatted and bookmarked to a uniform standard with all the corresponding benefits of an electronic record, including a search capability. Based on early success, the LSSS at Camp Pendleton now forwards all guilty plea cases subject to mandatory review in this manner. Promising savings in time and resources, the program has expanded to Marine Corps Base, Hawaii and Marine Corps Air-Ground Combat Center, 29 Palms, California, as the Marine Corps seeks to convert all major installations to digital records. While not truly an "electronic" record of trial system, as is the Federal CM/ECF system, this initiative is an important step in streamlining and modernizing the post-trial process. Digital records can be reviewed quickly by viewing the standardized bookmarks to ensure the record is complete. Problems associated with handling, copying, and collating multiple copies of voluminous paper records are also eliminated.

4. Victim Witness Assistance Program (VWAP). From late 2009 through early 2010, the Military Justice Branch of the Judge Advocate Division (JAM), undertook a review of the VWAPs at Marine Corps installations and identified weaknesses in the support system for victims and witnesses. Based on this review, JAM took a series of actions to revitalize the VWAP throughout the Marine Corps, including capturing VWAP data requirements in CMS and



sponsoring the first Marine Corps-wide VWAP Training Conference. The conference provided baseline training to VWAP personnel from nationally recognized civilian experts, conducted specialized training on handling victims of sexual assault, and developed a series of objectives for each VWAP office to meet within certain set timelines.

5. Marine Corps Manual for Legal Administration. JAD is currently revising the primary service-level regulation for legal administration⁵ to account for changes in law and regulation and to assist in implementing standardized procedures. Draft revisions include chapters covering military justice generally, defense counsel services, and the VWAP.

B. Goal: Develop and Maintain Critical Capabilities.

1. Leadership – SJA to CMC authority. Internal and external reviews identified a gap in service-level responsibility and authority to supervise the administration of military justice and set standards for the delivery of legal services in the Marine Corps. In response, the Secretary of the Navy recently decided to pursue legislative change to enhance the authority of the SJA to CMC to supervise the legal mission in the Marine Corps and to ensure a direct relationship is maintained between the Secretary and the SJA to CMC.⁶ Placing increased authority and accountability with service-level legal leadership will ensure that the Marine Corps legal community can set standards and then train and inspect to those standards. Moreover, these changes will better enable the SJA to CMC to meet his responsibilities to the Secretary and the Commandant, continue to improve the delivery of military justice services, and better position the Marine legal community to meet future challenges in an increasingly complex legal environment.

2. Building Communities of Practice. Since 1985, the Marine Corps has maintained an independent defense organization headed by the Chief Defense Counsel of the Marine Corps (CDC). This model has proven effective at providing defense counsel with mentorship, supervision and resources to professionally represent an accused servicemember. To provide

⁵ U.S. MARINE CORPS, ORDER P5800.16A w/ CH 1-5, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (31 Aug 99) [hereinafter LEGADMINMAN].

⁶ SECNAV letter to Independent Review (506) Panel of 5 November 2010.



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trial counsel with a similar resource, the Marine Corps implemented a Trial Counsel Assistance Program (TCAP). Both the Director of TCAP and the CDC have leveraged technology to better support counsel through the use of SharePoint websites. These initiatives have already improved our capability for real-time collaboration and information sharing.

a. Trial Counsel Assistance Program. The increasing complexity of courts-martial requires today's judge advocates to have a greater breadth and depth of knowledge while still being proficient in the basics. In response to this need, the Marine Corps stood up the TCAP in May 2010 within JAM. The TCAP consists of one field grade and one company grade officer. The TCAP provides training and resources to assist Marine prosecutors using a number of tools, including on-site training, video teleconferencing, and the TCAP SharePoint litigation support website that contains practice advisories, a military justice blog, a motions bank, along with other useful documents and links.

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Home - JAM - Microsoft Internet Explorer provided by NMCI

https://ehqmc.usmc.mil/jam/TCAP/default.aspx

http://www.armyfor.uscourts... Court Records and Briefs Home - JAM

ehqmc > Staff Judge Advocate

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TRIAL COUNSEL ASSISTANCE PROGRAM JAM

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Welcome to the TCAP Page

This site is designed to be a resource for trial counsel and supervisory government counsel. You'll find practitioner's resources, including motions, pleadings and sample correspondence, links to helpful websites and news and practice notes. All TC and supervisors are welcome to comment on posts, provide posts or send documents or other resources to benefit the community. Please bookmark this site, check it often for updates, and pass it along to your fellow TC.

News

11/9/2010

VTC or speakerphone murder-boards available

As TCAP picks up steam, we are offering to help murder-board your cases before you head into the courtroom. We are in the process of installing a VTC camera in our office. Once that is up and running, we can co the murder-boards via VTC. Until then, or if you're located at a law center that doesn't have VTC capability, we can do the murder-boards via speakerphone. We can be as involved in your case as you want us to be. Maybe you just want to run through your closing argument, or maybe you'd like to war-game which expert witnesses you should call for your case...we're here to help you. Just drop us a line and we'll set up a time to have the VTC or speakerphone call.

Posted at 9:24 AM by Capt Eric A. | Permalink | Email this Post | Comments (0)

A Simple, Methodical, and Effective Way to Write a Stipulation of Fact

A stipulation of fact is not simply an agreement between that parties; it is an admission by the accused. Accordingly, trial counsel should NEVER let the defense counsel draft the stip of fact. No offense to our defense brethren, but when their solemn duty to zealously represent the accused, they will always try to minimize the accused's culpability if given the chance. On the other hand, if you write the stip of fact, the defense is more willing to simply agree with your recitation than to try to draft up a new document.

An effective stipulation of fact should accomplish three basic objectives:

1. It should establish every technical element of the specifications to which the accused is pleading

MJDUs Links

- U.S. Supreme Court
- Court of Appeals for Armed Forces
- Navy-Marine Corps Court of Criminal Appeals
- Army Court of Criminal Appeals
- Air Force Court of Criminal Appeals
- CAAP/LOG
- Majo Wits
- Joint Government Blog
- Add new link

MJDUs Tools

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TCAP - Motions, Pleadings and Correspondence Bank		Parsons Maj Brevien C
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b. The Marine Defense Counsel Community. Leveraging advances in knowledge management programs, the CDC, in close coordination with the Headquarters, U.S. Marine Corps' Administrative, Resources, and Information Branch (ARI), developed a global online SharePoint website for collaboration and sharing information. This website created a worldwide "virtual law firm" comprised of all defense counsel and their enlisted support personnel around the globe to include deployed Marines. The CDC introduced this SharePoint site at the first ever Marine Corps-wide Defense Training Conference. This conference, centrally funded by HQMC, brought all defense counsel and their legal service specialists together for a week to introduce SharePoint, receive litigation training, and share best-practices within the various defense offices.



3. Training and Readiness (T/R) Manual. Training is essential to the successful accomplishment of the military justice mission. On 13 May 2010, the Marine Corps published a revised Legal Services T/R Manual, NAVMC 3500.82, with significant changes to the training of Marine legal personnel. The T/R Manual establishes Core Capability Mission Essential Tasks for readiness reporting and required events for standardized training of Marines assigned to Marine Corps legal services units. It provides tasking for formal schools and establishes standards to evaluate the proficiency of legal Marines in accomplishing required tasks.

In August 2010, Naval Justice School personnel and subject matter experts from the Marine legal community conducted a Course Content Review Board (CCRB) to recommend improvements to the introductory legal service specialist course based on the revised T/R Manual. In addition, the Marine legal community began development of proposed educational courses in the areas of military justice and post-trial processing for Marine legal service specialist noncommissioned and staff noncommissioned officers. The proposals were forwarded to the Ground Training Branch on 8 September 2010 for review and approval. Each program of instruction will build upon core legal competencies in military justice and improve the professional development of all Marine legal service specialists.

4. Military Justice Manager Billet Re-coding. In June 2010, JAD requested, and Marine Corps Manpower approved, the re-coding of an additional 22 structured 4402 billets to the Military Justice Manager MOS (4409).⁷ This MOS requires an advanced law degree (LL.M) or proven experience in the practice of military justice. This initiative will provide experienced judge advocates in supervisory military justice billets.

C. Goal: Oversight Inspections.

1. Commanding General's Inspection Program and Automated Inspection Reporting System (AIRS) Checklist. JAD developed and the Inspector General of the Marine Corps

⁷ The Marine Corps MOS Manual refers to MOSs that require education, training or experience in addition to that required of the basic MOS as "necessary" MOSs. U.S. MARINE CORPS, ORDER 1200.17, MILITARY OCCUPATIONAL SPECIALTIES (MOS) MARINE CORPS MANUAL (23 May 2008)[hereinafter MOS Manual].



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implemented AIRS Checklist 091 - SJA Office, Law Center, Legal Service Support Section - in May 2010. This initiative established for the first time, a checklist that includes standards for all SJA-level legal services functional areas, including military justice, and is institutionalized as a formal part of the Commanding General's Inspection Program (CGIP). The checklist provides Marine Commanders and their SJAs a gauge by which to measure the performance of their legal organizations. Since implementation, the Marine Corps has conducted 091 inspections at Marine Corps Base Quantico Law Center and at the SJA offices at Marine Corps Base Camp Lejeune and II Marine Expeditionary Force.

2. SJA to CMC Inspections. The SJA to CMC has historically visited Marine Corps installations to assess the provision of legal services. While these visits have typically included an assessment of the health of the provision of legal services at each office, there has not been a standardized inspection process within the Marine Corps consistent with the requirement under Article 6, UCMJ, "to make frequent inspection in the field in supervision of the administration of military justice." To strengthen these inspections, JAD developed uniform information requirements which, in conjunction with CGIP inspections, provide Commanders and their SJAs an additional opportunity to thoroughly assess legal readiness and provide a more effective tool for the supervision of the administration of military justice.

D. Goal: Evaluating and Adapting Structure to Right-size the Legal Community.

1. Manpower Initiatives Affecting Military Justice. By the beginning of FY 10, the Marine Corps manpower process had already validated the requirement for an increased number of judge advocates⁸ and had begun taking steps to right-size the legal community (i.e., to build inventory to produce a sufficient number of judge advocates in appropriate grades to fill both operational and military justice requirements).

For company grade judge advocates, the Marine Corps increased accessions by 71% from FY 08 to FY 10. In FY 10, the judge advocate recruiting mission stood at 60, up 15 from the previous

⁸ JAD conducted reviews in 2005 and 2007 which validated requirements and identified a need to realign and increase judge advocate structure and manning.



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year alone. In addition, to build experience in the company grade ranks, the Marine Corps instituted a precept for the career designation board and offered all judge advocates an opportunity to remain on active duty. Finally, in September 2010, MARADMIN 515/10 announced an increase in the Law School Education Debt Subsidy (LSEDS) from \$30,000.00 to \$45,000.00. By increasing accessions and reducing the cost for company grade judge advocates to stay on active duty, these initiatives expanded the number and experience of our active duty litigators.

Two manpower initiatives specifically addressed identified shortfalls in the grades of major and colonel. First, the Marine Corps conducted two Return-to-Active-Duty (RAD) boards and selected a total of 12 majors, many of whom will be assigned immediately as mid-level military justice managers. Second, a promotion precept was added to the FY 12 colonel's selection board (convened in September 2010) and 11 judge advocates were selected to colonel.⁹ Increasing the number of experienced military justice supervisors will inevitably raise the quality of our military justice practice.

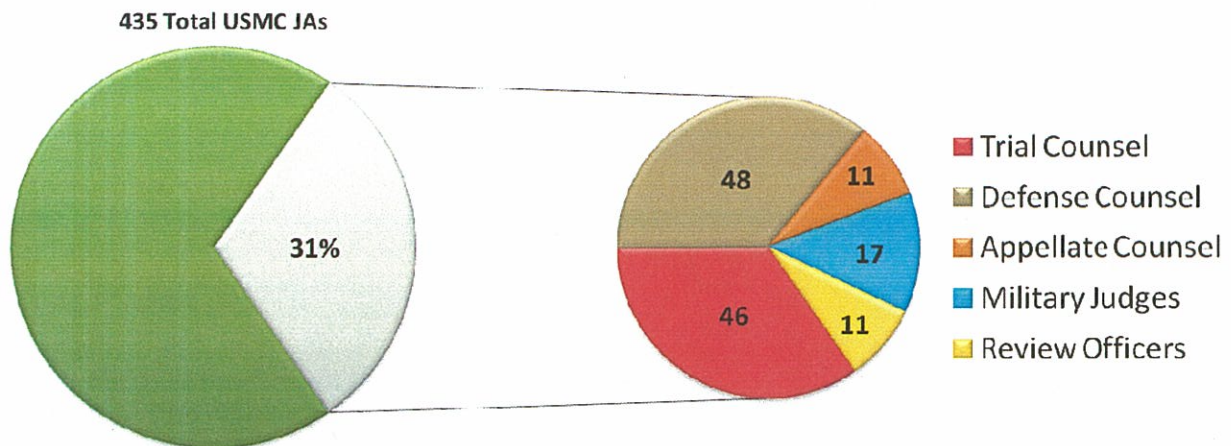
At the beginning of FY 10, there were 411 judge advocates across the Marine Corps. By the beginning of FY 11, there were 473.¹⁰ Additionally, due to the billet re-coding initiative, there are now 22 coded military justice supervisor billets. Figure C reflects the number of counsel dedicated exclusively to the military justice mission. Although not an exact science, finding the right caseload per counsel requires a balance. Counsel must carry enough cases to gain a level of proficiency and establish an experience base, but not so many as to deteriorate their ability to provide competent representation in each individual case.

⁹ The percentage of eligible judge advocates promoted to colonel on the FY 12 Colonel Promotion Board exceeded that of the previous years. Sixty-four percent (9 of 14) of eligible in-zone Marine judge advocates were selected and 15% (2 of 15) of eligible above-zone officers were selected. The average selection rates for all other MOSs were 52% in-zone, 1.9% above-zone.

¹⁰ The number at the beginning of FY 10 includes 16 Marine judge advocates who graduated from NJS on 9 October 2009. The number at the beginning of FY 10 includes 38 Marine judge advocates that graduated from NJS on 8 October 2010.



Figure C. Judge Advocates Dedicated to Military Justice as of 1 September 2010¹¹



2. Creating New Court Reporters: Voice Recognition Training. Court reporters play an integral role in the trial and post-trial process. Over the past three years, the Marine Corps has transitioned from court stenographers to voice recognition court reporters. This change was accomplished by training legal service specialists to do voice recognition reporting as a secondary MOS. It also reduced the training pipeline for court reporters from two years for new stenographers to 11 weeks for voice recognition training and certification. In coordination with the Naval Justice School and Marine Corps Training and Education Command, JAD increased the total number of funded training seats from 20 in FY 09 to 30 in FY 10. These additional court reporters will ensure that the Marine Corps can respond to changing needs in the military justice mission as they arise.

3. Transfer of Reserve LSSS. In August 2010, the Marine Corps transferred the Marine Forces Reserve LSSS (R-LSSS), formerly part of Mobilization Command, to JAD. This move enhanced the ability of the SJA to CMC to effectively coordinate the employment of over 340 Marine reserve judge advocates, including those whose focus is military justice. Three of the six R-LSSS branches - the Regional Defense Activity Support Branch, the Regional Government Activity Support Branch, and the Navy-Marine Corps Trial Judiciary Branch - perform functions specifically related to military justice. They are staffed by seasoned attorneys capable of responding to the requirements of the trial and defense communities to serve as detailed counsel

¹¹ This number does not include the 38 Marine judge advocates that graduated from Naval Justice School on 8 October 2010.



and to assist with case preparation and training, as well as to serve as judges to support the judiciary.

4. Court Reporter and Post-trial Review Office Regionalization Study. A proposal to consolidate offices responsible for post-trial processing to gain economies of scale and concentrate expertise is currently being evaluated. This proposal would require an effective system of electronic records before implementation.

IV. MILITARY JUSTICE MISSION ACCOMPLISHMENT

A. General and Special Courts-Martial Litigated. In FY 10, the Marine Corps litigated to completion 178 general courts-martial and 623 special courts-martial, representing 77% of all courts-martial in the Department of the Navy. With 46 trial counsel and 48 defense counsel, the Marine Corps case load for FY 10 amounts to an average of 17 cases (4 general and 13 special courts-martial) per counsel. Although the evaluative usefulness of this average case load is limited due to variations in individual counsel case load, there are no indications from military justice supervisors or military judge assessments that the caseload is so high as to jeopardize competent representation on either side of the aisle. Historical data and local assessments indicate that our court-martial case load is sufficient to provide Marine judge advocates and support personnel the opportunity to gain proficiency and build an experience base for the development of a professional military justice practice.

B. Other Military Justice Tasks: Trial and Defense Counsel and Military Justice Support Personnel. The requirements associated with court-martial litigation depend, of course, on whether the case is contested, the forum, and the relative complexity of the case. In addition to tasks associated with litigation, including post-trial tasks, military justice personnel perform a variety of other functions including administrative board hearings and Boards of Inquiry,¹² command advice to convening authorities (trial counsel), and non-court-martial advice

¹² In FY 10, there were 540 enlisted administrative separation boards and 42 Boards of Inquiry held in the Marine Corps.



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to individual Marines and Sailors (defense counsel), such as nonjudicial punishment counseling and Article 138, UCMJ complaints.

C. Judicial Evaluation of Counsel. In November 2010, JAD surveyed military judges who regularly preside over cases tried by Marine counsel, requesting an assessment of our court-martial practice. Counsel performance was rated on a five point scale. JAD asked the judges to assess trial counsel in: charging, communication with the judiciary, pre-trial motions practice, witness preparation, and trial performance, including sentencing. The judges evaluated defense counsel in corresponding areas: client preparation, communication with the judiciary, motions practice, witness preparation, and trial performance, including sentencing. Recognizing that the value of qualitative assessments of litigation performance is limited due to lack of objective metrics, participating judges were specifically asked to provide detailed comments on any areas of performance warranting attention, either positive or negative.

The results of the evaluations indicated that Marine judge advocates were accomplishing the trial mission on both sides of the aisle. Although the five point scale could not be tied to an objective metric, the average judge assessment was above mid-range, indicating at least an acceptable level of proficiency. The comments were generally positive, describing an industrious and dedicated trial and defense bar. Several judges expressed concern over the turnover in trial billets and recommended that counsel be required to remain in trial billets for a longer period of time. Military judges stated that counsel on both sides could improve in pre-trial motions practice and in their effectiveness in identifying and raising courtroom objections. The complete assessments were provided to the CDC and the Director of TCAP to identify areas of concentration for training of the respective communities.

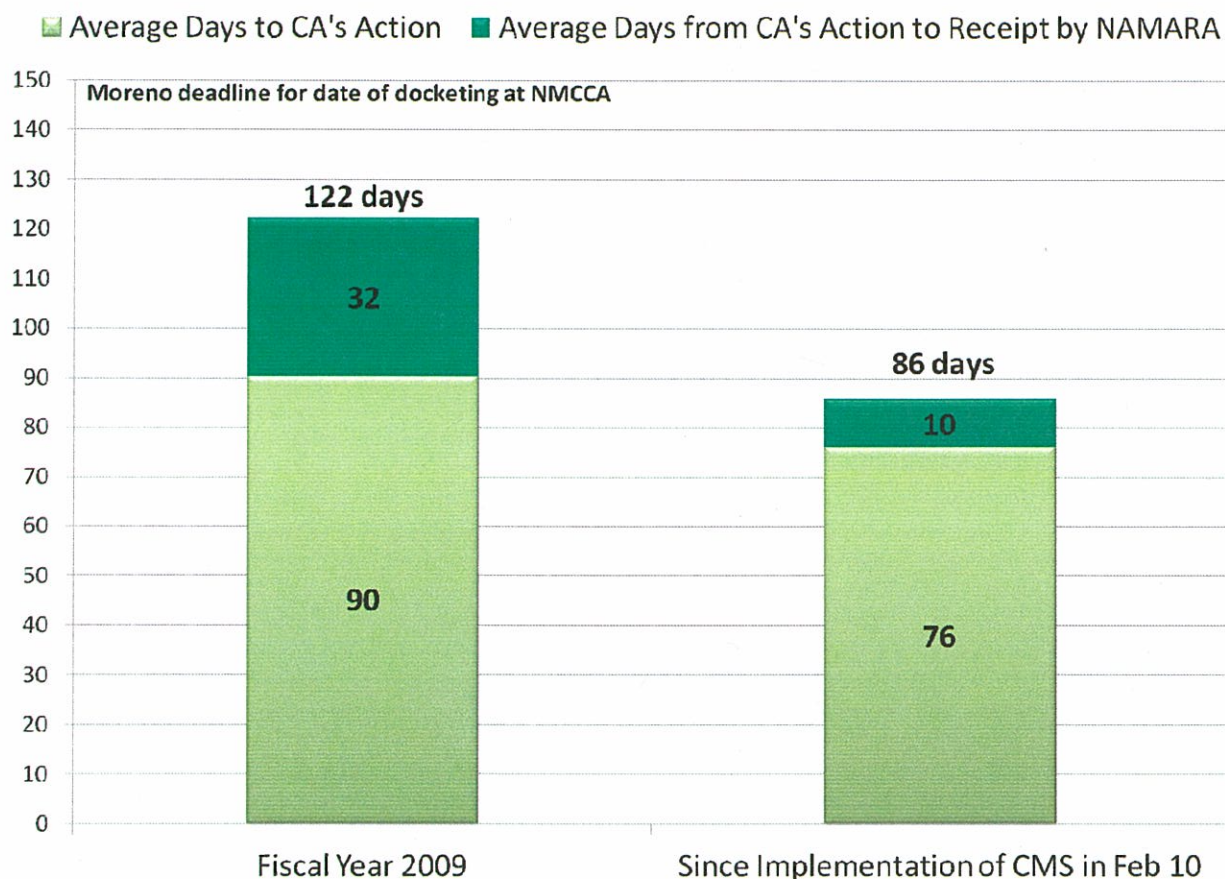
D. Post-Trial Case Processing. In FY 10, 2,481 general, special, and summary courts-martial entered the post-trial process. For those special and general courts-martial required to be forwarded to NAMARA, Marine legal offices improved processing times by an average of 36 days since the implementation of CMS in February 2010. *United States v. Moreno* sets forth the requirement of 150 days from date of trial (sentencing) to docketing of the case with the Court of



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Criminal Appeals.¹³ The average processing time for Marine Corps cases since the implementation of CMS is 86 days from date of trial (sentencing) to receipt of the record of trial by NAMARA.¹⁴

Figure D. Post-Trial Processing Times for USMC Cases FY 09 and Post-implementation of CMS in Feb 10



In addition, on 24 February 2010, one week after the effective date of implementation of CMS, 41 of the 121 total cases in the post-trial process exceeded 120 days from the date of trial (sentencing) to convening authority's action or receipt at NAMARA.¹⁵ As of 28 September 2010, after seven months of mandatory CMS use, three of 138 total cases fell in this category.¹⁶

¹³ "The United States Court of Appeals for the Armed Forces has held that it will apply a presumption of unreasonable delay... where the action of the convening authority is not taken within 120 days of the completion of courts-martial trial" or when the case is not docketed with the Court of Criminal Appeals within 150 days. *U.S. v. Moreno*, 63 M.J. 129, 142 (2006).

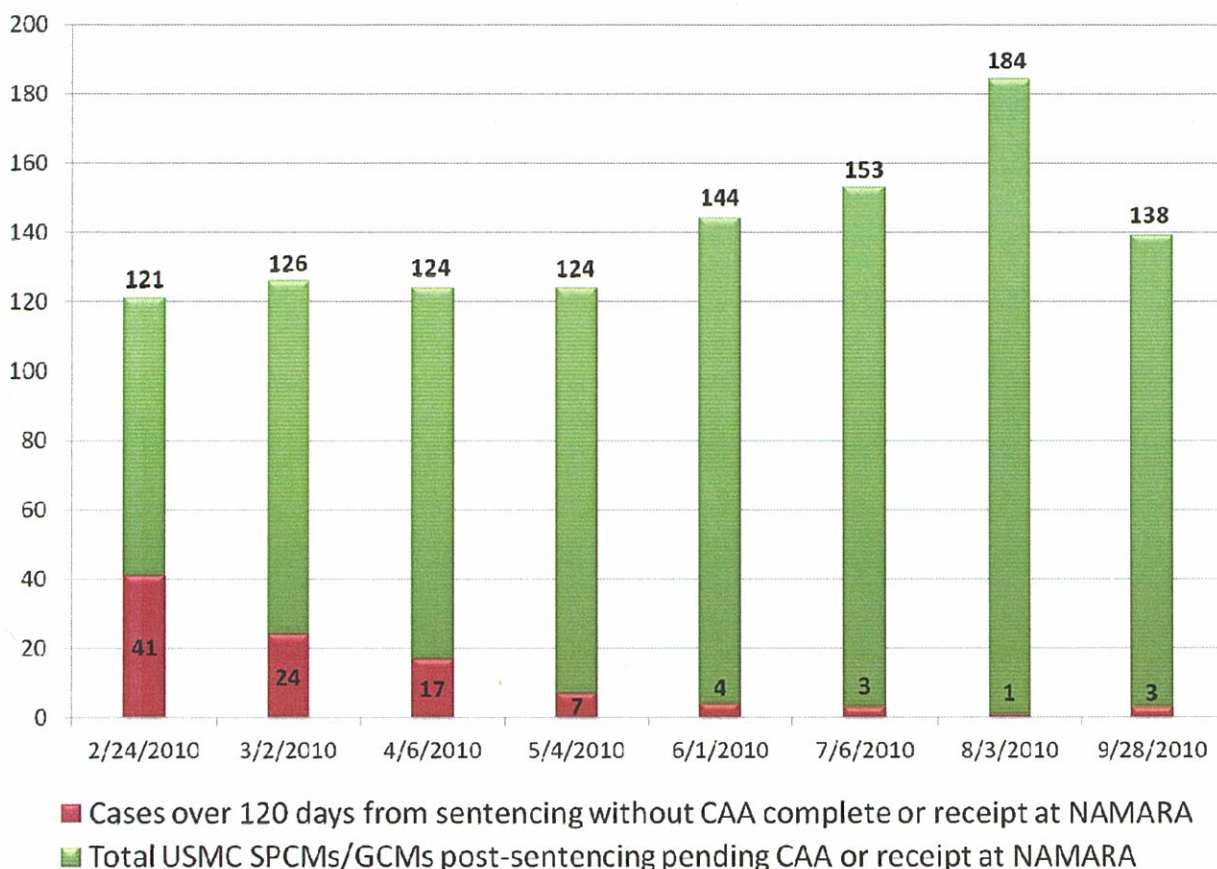
¹⁴ Receipt by NAMARA marks the conclusion of the service-level post-trial processing mission. On average, those cases that are ultimately docketed with NMCCA, are docketed 1-3 days from the date NAMARA receives the record.

¹⁵ The standards set forth in *Moreno* allow 120 days from the date of trial (sentencing) to convening authority's action (CAA). Another 30 days is allowed from CAA to docketing at NMCCA. CMS flags all cases over 90 days without either: 1) a completed



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Figure E. Marine Corps Cases in the Post-trial process (Post-CMS)



The decrease in post-trial cases over the 120/150 day limit is largely the result of increased oversight by JAD, and by military justice supervisors at all levels, accomplished through the use of CMS. Cases that appear over 90 days are flagged yellow on CMS via an automatic alert system and reported to the SJA to CMC. Cases that exceed 120 days are flagged red and also reported to the SJA to CMC. Because CMS is a real-time case tracker, JAD is able to identify issues as they occur and to offer assistance as the need arises. For example, during FY 10, CMS indicated that processing times at the law center at Marine Corps Base Hawaii were longer than at other offices. Further inquiry revealed that this was due in part to personnel issues which impacted availability of assigned court-reporters. The solution was to re-route record of trial transcriptions to other court-reporter offices until Marine Corps Base, Hawaii's court reporter assets were back to acceptable levels. The institutionalization of active monitoring, at all

CAA or 2) receipt by NAMARA. As previously mentioned, once NAMARA receives the completed record of trial the service-level post-trial processing responsibility for the Marine legal community is complete.

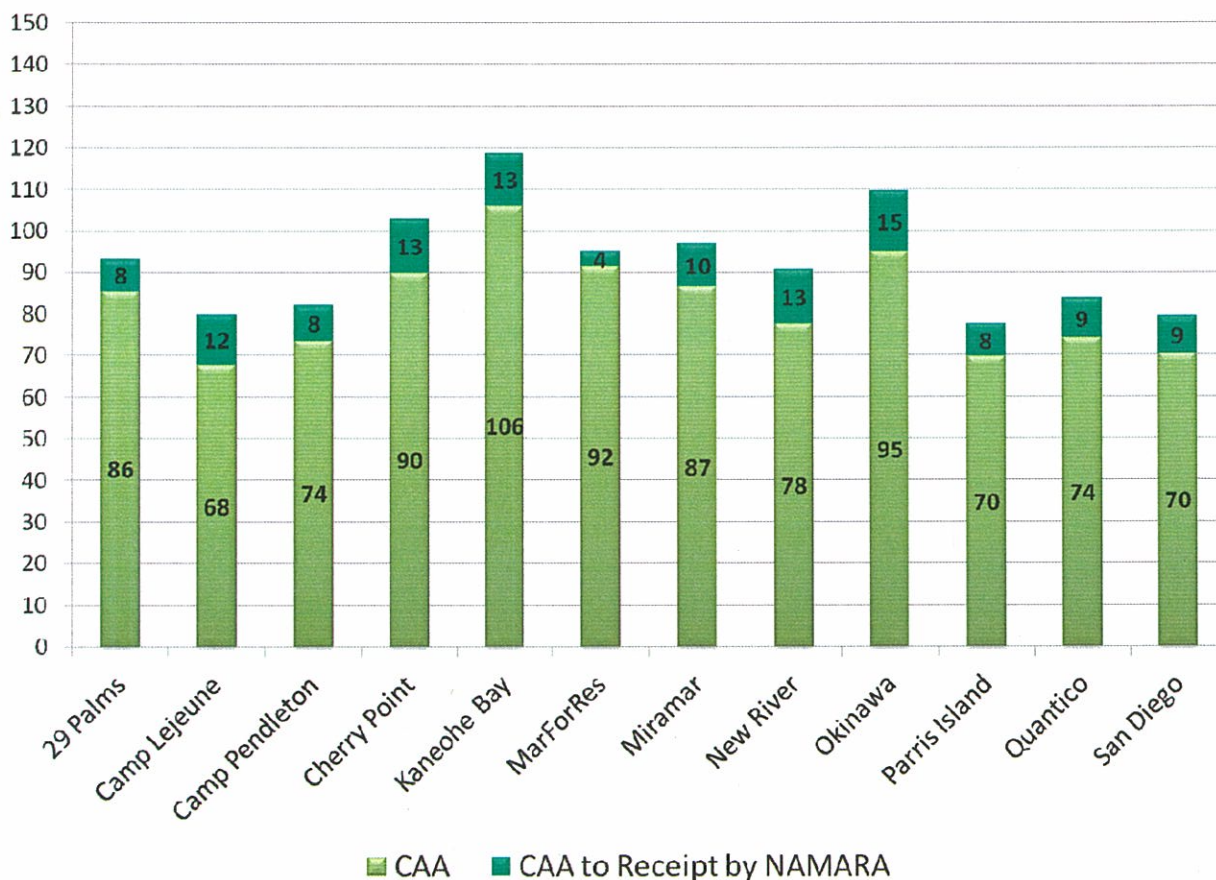
¹⁶ "Some cases will present specific circumstances warranting additional time, thus making those periods [of delay] reasonable." *Moreno* at 143.



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supervisory levels, through a single data-base real-time tracking system will ensure that every law center, LSSS and SJA office consistently meets timely post-trial processing requirements.

Figure F. Post-trial Processing Averages by Installation (Post-CMS)



V. TRENDS AND FUTURE REQUIREMENTS

A. Case load. The Marine Corps currently maintains a special and general courts-martial docket of approximately 500 cases. Although many of these cases will be adjudicated at special and general courts-martial, a large percentage will be disposed of at alternative forums such as administrative separation boards, summary courts-martial or at nonjudicial punishment (NJP). These alternative dispositions still require judge advocate support as suggested by the 540 administrative separation boards conducted by the Marine Corps in FY 10, each board requiring a defense counsel to represent the respondent. Boards of Inquiry (officer administrative



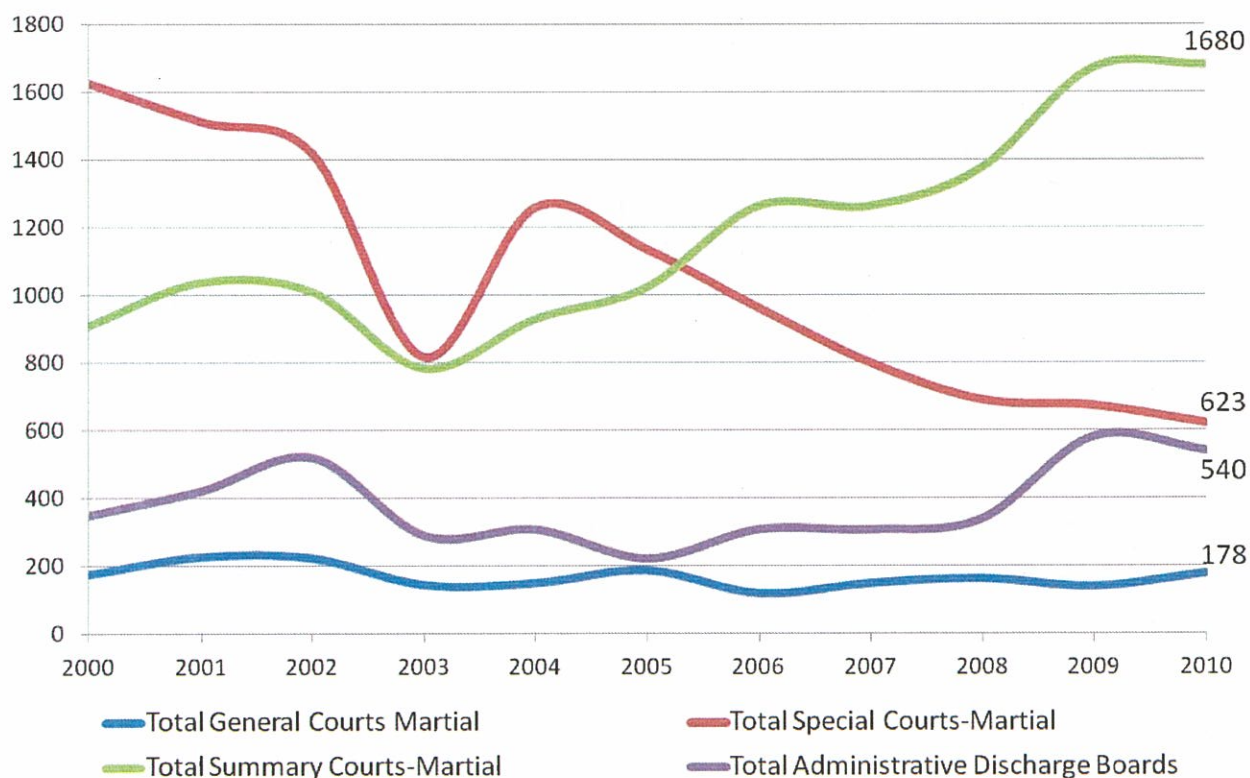
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separations) also contribute to the workload of trial and defense counsel, as does NJP counseling, Article 138 UCMJ complaints, and Request Mast petitions by Marines and Sailors.

As illustrated in Figure G, the number of general courts-martial litigated has remained relatively steady over the past ten years, with an increase from 140 in 2009 to 178 in 2010. Over the same period, the number of special courts-martial litigated has decreased by more than 50%.

Summary courts-martial have increased by nearly the same amount. Additionally, administrative separation boards increased from 307 in 2006 to 338 in 2008 to 540 in 2010. This trend of increasing summary courts-martial and administrative separation boards suggests, in part, that Commanders have increasingly looked to alternatives to special courts-martial for handling misdemeanor level misconduct, such as single drug use cases and unauthorized absence.

Figure G. Case Disposition Trends 2000-2010



In assessing whether these trends will continue, two likely contributing factors are worth mentioning. First, the relatively lengthy post-trial review process associated with special courts-martial cases in which a bad conduct discharge is awarded impacts unit and Marine Corps



manning.¹⁷ Concern about manning has over time, contributed to a shift in disposition philosophy toward resolving cases involving misdemeanor level misconduct at lesser or alternative forums. Second, the increase in operational tempo since 2002, and the heavier demands it has placed on time and resources, has magnified this shift in disposition philosophy in favor of speed and predictability. Given the uncertainty of our future operational commitments and the uncertainty as to whether the current disposition trends will continue, the Marine Corps legal community must be prepared to handle an increase in court-martial caseload.¹⁸

B. Case Complexity. While there has been a decrease in the overall number of courts-martial, a number of factors have contributed to the increasing complexity of those courts-martial that are litigated. Child pornography and sexual assault prosecutions illustrate the increasing requirements for counsel, which include, for example, a detailed understanding of computer forensics, forensic child interviews, DNA evidence, and other complex scientific evidence. Similarly, amendments to Article 120, UCMJ, have created issues resulting in a significant increase in pre-trial litigation in rape and sexual assault cases. Prosecutions of alleged law of war violations from operations in Iraq and Afghanistan have produced comparable complexity involving classified information and associated discovery issues, national media interest, and foreign witnesses. To meet the challenges of these increasingly complex cases, the Marine Corps must ensure its judge advocates and legal service specialists continue to develop and maintain a high level of military justice proficiency, regardless of caseload or other requirements that might compete for legal community resources.

¹⁷ Commanders' concerns are based, in part, on the fact that the command cannot receive a replacement for the court-martialed Marine until that Marine is removed from the command rolls and transferred by record book to the Navy Marine Corps Appellate Leave Activity. Similarly, Marine Corps end strength includes all Marines on appellate leave.

¹⁸ It is foreseeable that upon conclusion of the current conflicts, there may be a spike in the number of courts-martial. Once the force returns to a primarily garrison environment, there will be more opportunities for Marines to commit misconduct, and Commanders will have less incentive to dispose of cases quickly due to the operational tempo.



VI. CONCLUSION

In FY 10, the Marine Corps fulfilled its military justice mission and all of the departmental requirements levied upon it. The SJA to CMC continues to work closely with the Judge Advocate General of the Navy to ensure the future success of the Marine Corps' and the Department's legal missions. While there remains much to be done, we believe FY 10 represents a year of reflection, initiative, and transition for our community. With FY 11 underway, we're moving in the right direction. Judge advocate strength has increased and the community is closer to being right-sized. CMS provides total visibility over our military justice caseloads. Post-trial processing times remain low and well within the requirements established by the Court of Appeals for the Armed Forces. Our communities of military justice practice, led by the Chief Defense Counsel and the Military Justice Branch and TCAP, are robust, bolstered by technology, and providing instant global reachback for practitioners. Electronic community dialogues on the legal issues of the day have become routine. We continue to work for and closely with our Commanders. The AIRS inspection checklist provides Marine Commanders with the ability to accurately monitor their military justice mission. We continue to work toward implementing initiatives, including electronic records of trial, standardized forms, and other projects to improve the quality of military justice services throughout the Marine Corps. The Marine legal community will continue to provide the leadership and supervision essential to successful accomplishment of the military justice mission in every case, while continuing to assess our performance to ensure the professional delivery of legal services in the Marine Corps and Department of the Navy.

